

**Before the
United States Department of Commerce, National Telecommunications Information
Administration & United States Department of Agriculture, Rural Utilities Service
Washington, D.C. 20230**

Joint Request for Information)	
)	
)	
Broadband Initiatives Program and)	
Broadband Opportunities Program)	
Act of 2009 Broadband Initiatives)	
)	
Department of Commerce)	RIN 0660-ZA28
National Telecommunication Information)	Docket No. 090309298-9299-01
Administration)	
)	
Department of Agriculture)	RIN 0572-ZA01
Rural Utilities Service)	

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EXECUTIVE SUMMARY

The complete nationwide deployment and adoption of broadband is one of the most difficult and critical challenges the United States faces today. The broadband grant and loan provisions contained in the Recovery Act create a new and unique opportunity for the federal government to help provide new economic opportunities to all Americans, especially those communities that currently receive little or no broadband access. To achieve the goals set forth by the Recovery Act, both RUS and NTIA must establish flexible and minimally intrusive rules and requirements for the implementation of the new BIP and BTOP programs. RUS and NTIA issued rules in their first funding round for these programs that offered a good start toward appropriately implementing the program in a manner consistent with the spirit of the Recovery Act. That said, the initial funding round program has had its difficulties and growing pains. As a result, RUS and NTIA have wisely sought comment on how best to refine the program.

In response to RUS' and NTIA's request for information, Harris Corporation is pleased to provide the agencies the recommendations in the following document. The following is a summary of Harris' primary recommendations:

- RUS and NTIA should modify Step One of the application process to require less detailed information and use the Step Two "Due Diligence" phase for request for more detailed information for highly qualified applicants. **(Section I.A)**
- RUS and NTIA should continue to require all applicants to submit the same information regardless of whether an applicant is a newly created entity. **(Section I.B)**
- When applicants specify a proposed service area RUS and NTIA should permit applicants to submit longitude and latitude data in lieu of census block data. **(Section I.C)**
- RUS and NTIA should modify the rural infrastructure grant application process to allow applicants to apply directly to BTOP without the requirement to first apply to and be rejected by RUS under BIP. **(Section I.D)**

- The confidentiality policies in the first NOFA provide sufficient transparency and should not be modified (**Section I.E**)
- When awarding grants, RUS and NTIA must priorities the objectives, priorities, and target populations set forth in the Recovery Act and relevant broadband provisions. (**Section II.A**)
- RUS and NTIA should retain the definition of broadband established in the original NOFA (**Section II.B**)
- There is no need to modify and clarify the interconnection rules or the managed services exception (**Section II.C**)
- RUS and NTIA have adopted sufficient non-discrimination requirements. (**Section II.D**)
- Selection criteria must be technology neutral in order to utilize Recovery Act funds efficiently and comply with congressional intent. (**Section II.E**)

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In the Matter of)	
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Joint Request for Information)	
American Recovery and Reinvestment)	Docket No. 0907141137-91375-05
Act of 2009 Broadband Initiatives)	
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COMMENTS OF HARRIS CORPORATION

Harris Corporation (“Harris”) submits these remarks in response to the second joint request for information (“RFI”) issued by the Rural Utilities Service (“RUS”)¹ and the National Telecommunication and Information Administration (“NTIA”) regarding the implementation of the broadband provisions of the *American Recovery and Reinvestment Act of 2009* (“Recovery Act”).² Harris is an international communications and information technology company serving government and commercial markets in more than 150 countries. In these comments Harris addresses certain issues relating to the NTIA Broadband Technologies Opportunity Program (“BTOP”) and RUS Broadband Incentives Program (“BIP”) application process and the eligibility, funding, and application evaluation rules established under the First Notice of Funding Availability (“NOFA”). In regards to the application process Harris recommends that: (1) application requirements should be the same for all eligible entities; (2) when specifying service areas applicants should be permitted to submit longitude and latitude data in lieu of census blocks; (3) applicants should be able to apply outright to the grant program of their choice; and (4) rules pertaining to application confidentiality and transparency should not be

¹ Dep’t of Commerce and Dep’t of Agriculture, *Joint Request for Information*, 74 Fed. Reg. 58940 (Nov. 16, 2009) (“*RUS-NTIA Second RFI*”).

² Pub. L. No. 111-5, 123 Stat. 115 (February 17, 2009) (“*Recovery Act*”).

changed. Harris also believes that rules adopted in the original RUS and NTIA Notice of Funding Availability³ (“NOFA”) regarding the definition of broadband, nondiscrimination, and interconnection should be retained and that evaluation criteria should remain technology neutral. Furthermore, the rules adopted by RUS and NTIA in the Second NOFA must direct funding towards the objectives, priorities, and target populations set forth in the Recovery Act and relevant broadband provisions.

Both the BIP and BTOP have the opportunity to provide enhanced educational, medical, public safety, and occupational opportunities for all Americans, particularly those in unserved and underserved areas. Harris stands ready to provide innovative ideas to utilize grant funds by working with both public and private entities to deploy broadband networks and infrastructure nationwide.

I. The Application and Review Process.

A. RUS and NTIA Should Modify Step One of the Application Process To Require Less Detailed Information and Use The Step Two “Due Diligence” Phase for Requests for More Detailed Information From Highly Qualified Applicants.⁴

In general, Harris agrees with the views of RUS and NTIA in the second RFI that the application process should be streamlined.⁵ In the original NOFA, RUS and NTIA established a two step application process that attempted to “balance the burdens on applicants versus the needs of the agencies to efficiently evaluate applications.”⁶ According to the NOFA, “[i]n step one, the goal is to **create a pool of viable and potentially fundable applications**. Step two is

³ See Dep’t of Commerce and Dep’t of Agriculture, *Notice of Funding Availability*, 74 Fed. Reg. 33104 (July 9, 2009) (“*First NOFA*”).

⁴ See RUS-NTIA Second RFI, *supra* note 1, at 58941.

⁵ Section I.A of the second RUS-NTIA RFI states that “RUS and NTIA tentatively conclude that the application process should be streamlined.” *Id.*

⁶ *First NOFA*, *supra* note 3, at 33105.

to fully validate the submission in step one and identify the most highly qualified applications for funding.”⁷ While Harris understands the need of the agencies to efficiently evaluate applications, it believes that the burden imposed on applicants by the step one process is overly burdensome because of the number of questions asked and the number of attachments required.

The two-step process, as it currently stands, frontloads the majority of its information gathering and consequences for not providing such information (*i.e.*, outright rejection of the application) into its first step. In fact, the step one process in practice is tantamount to a “due diligence” request for information that is meant for step two. Consequently, many otherwise qualified applicants may be unable make a strong business case for risking valuable capital, research, man-hours, and other resources on a return of only the opportunity to enter a “pool of viable and potentially fundable”⁸ group of applications. Harris suggests that the application process may be made less burdensome on both applicants and the agencies if RUS and NTIA simplified step one of the process by requiring more of an “overview” of proposed projects and saved requests for more detailed information (*e.g.*, Attachments C, H and I of the BTOP application) for the second step of the application process.

B. RUS and NTIA Should Continue to Require All Applicants To Submit The Same Information Regardless Of Whether An Applicant Is A Newly Created Entity.⁹

The second RFI seeks comment on what type of information RUS and NTIA should “request from new businesses, particularly those that have been newly created for the purpose of

⁷ Id.

⁸ Id.

⁹ Section I.A.1 and 2 of the second RFI seeks comment on what type of information RUS and NTIA should “request from new businesses, particularly those that have been newly created for the purpose of apply for grants under the BIP and BTOP programs” and whether the application process should reflect the participation of consortiums or public-private partnerships in the application process. RUS-NTIA Second RFI, *supra* note 1, at 58941.

applying for grants under the BIP and BTOP programs[.]”¹⁰ In particular, RUS and NTIA propose “eliminat[ing] the requirement to provide historical financial statements for recently created entities.”¹¹ Harris has three primary concerns with taking such action. First, Harris is concerned that eliminating the requirement to provide historical financial data for new entities may inadvertently provide an unfair competitive advantage to applications submitted by new entities. As a result, new entities would not be burdened with the same information submission requirements as more established entities. This would give new entities a competitive advantage in the application process by allowing them to focus more time and resources on other portions of their grant applications.

Second, eliminating historical financial data for new entities may encourage applicants to set up shell entities in order to circumvent disclosure requirements. Doing so could result in larger and more established organizations seeking grant funding under the guise of new entities specifically to avoid the historical financial disclosure portion of application. The purpose of creating this new entity could, thus, improve the chances of receiving an award, or to obtain a waiver of the 20 percent match requirement by demonstrating a fictional “financial need” for such a waiver.¹² With this possibility in mind, RUS and NTIA should be inclined to request additional information from applicants regarding partners or subcontractors if it appears that entities party to the application have managerial control or a controlling financial stake in the project in the second phase of the application process.

¹⁰ Id.

¹¹ Id.

¹² Recovery Act, *supra* note 2, at 514.

Third, Harris is concerned that this particular requirement change may undermine the stated goals of RUS and NTIA to support only “viable, sustainable, and scalable projects.”¹³ It is worth pointing out that a lack of historical information, such as finances, does not make that information unimportant. In fact, such information, or lack thereof, is vital to the BIP and BTOP consideration process. Just as the financial services industry evaluates the credit worthiness of potential borrowers and prudent investors evaluate the value of company by reviewing financial histories, so too should RUS and NTIA review the financial histories of grant applicants to the BIP and BTOP. Without the availability of such information for new entities (at least for their owners or partners), how is RUS and NTIA to reasonably assess whether these particular applicants can “convincingly demonstrate the ability of [their] project to be sustained beyond the funding period.”¹⁴ A reasonable evaluation as to whether a proposed grantee (or its owners and partners) is financially solvent is fundamental to making such a determination.

Harris notes that in general RUS and NTIA should treat all applicants identically, including entities in consortiums and public-private partnerships. RUS and NTIA needs to prevent applicants from finding ways to circumvent requirements in the application process. With that said, Harris would caution RUS and NITA against casting too wide a net so as to include subcontractors and other entities who do not have managerial control over the project and who would not otherwise be required to disclose financial information.

¹³ First NOFA, *supra* note 3, at 33107.

¹⁴ Id.

C. When Applicants Specify A Proposed Service Area, RUS And NTIA Should Permit Applicants to Submit Longitude and Latitude Data In Lieu of Census Block Data.¹⁵

The initial NOFA's requirement for census block data is overly burdensome, and in some cases less useful than other forms of data. RUS and NTIA should consider accepting other forms of data to illustrate proposed service area(s), census block data is not the only solution. In certain circumstances, such as when service areas are widespread or not uniform, longitude and latitude information may provide accurate information for defining an applicant's proposed service area(s). It should be up to applicants to determine how best to define its proposed service area(s). Failure of an applicant to properly describe the project's proposed service area is to the detriment that applicant's application. It is in the best interest of the applicant to accurately describe their proposed service area(s). Therefore, RUS and NTIA should not be wary of permitting applicants to demonstrate proposed service areas by longitude and latitude.

D. RUS And NTIA Should Modify The Rural Infrastructure Grant Application Process To Allow Applicants To Apply Directly to BTOP Without The Requirement To First Apply To And Be Rejected By RUS Under BIP.¹⁶

RUS and NTIA should modify the rural infrastructure grant application process to allow applicants with service areas that are 75 percent rural to apply directly to the BTOP without the requirement to first apply to and be rejected by RUS under BIP. However, if applicants should choose to apply to BIP first, RUS and NTIA should allow those applicants the ability to seek funds from the BTOP as agencies previously contemplated under the first NOFA. Harris

¹⁵ Section I.A.3 of the second RFI seeks comment on whether RUS and NTIA should amend the application process and allow other data other than census block level data to "delineate the proposed funded services areas." RUS-NTIA Second RFI, *supra* note 1, at 58941.

¹⁶ Section I.A.4 of the second RFI seeks comment as to whether NTIA should fund infrastructure projects under the BTOP program where the proposed funded service areas are at least 75 percent rural and have not been first rejected by the BIP program. More concisely stated, RUS and NTIA ask whether applications should "continue to be required to be submitted to RUS or . . . [whether] the agencies [should] permit rural applications to be submitted directly to NTIA, without having to be submitted to RUS as well...." *Id.*, at 58941-58942.

believes that the aforementioned process would better serve Congress' goals of providing access to broadband services to users residing in unserved and underserved areas of the United States.¹⁷

The current application process for these projects creates two problems. First, it puts large projects that may be better suited for BTOP grant funding in direct competition with smaller projects more suitable BIP loan or grant funding opportunities. This problem is exacerbated by the fact that BIP has a significantly smaller pool of funds available for grant applications than does BTOP. As a result, for projects where the business case for a loan or a loan/grant combo is poor, RUS must either choose to fund just a few large projects and send smaller projects to BTOP, or decide to fund only smaller projects and send larger projects to BTOP. For grant applicants with larger projects requiring more funding, it may make sense to simply forgo applying to BIP and apply directly to the larger pool of grant funding available under BTOP.

Second, Harris is concerned that the current application process for rural infrastructure projects may inadvertently create a bias in the BTOP evaluation process that favors non-rural projects. This bias against rural infrastructure grant applications may develop in three ways. First, bias may be created by the additional burden on rural infrastructure applicants of having to submit two applications. Under the current process rural applicants applying to BIP face a greater likelihood of rejection for the failure to submit all necessary information and supporting documentation than do urban applicants applying only to BTOP. Second, bias may be created by the possibility that NTIA reviewers may be more likely to reject an application that has already been rejected by their RUS counterparts. Finally, bias may be created by the fact that under the original NOFA, both programs give outside parties the opportunity to challenge the merits of an

¹⁷ Recovery Act, *supra* note 2, at 514.

application.¹⁸ This gives outside parties “two bites at the apple” when challenging the merits of rural infrastructure project grant applications. These biases may unintentionally cause the NTIA to fund more grant applications in non-rural areas. Harris believes this result runs counter to the intent of the Recovery Act.

E. The Confidentiality Policies in the First NOFA Provided Sufficient Transparency and Should Not Be Modified.¹⁹

RUS and NTIA should maintain the confidentiality and transparency policies adopted in the first NOFA.²⁰ While Harris supports and understands the value in making applicants’ project summaries available to the public, Harris does not believe that applicants’ executive summaries should be released. Doing so would ultimately weaken the application, make the evaluation of applications more difficult, and unjustly penalize applicants. Making the executive summary available to the public would undoubtedly cause applicants to limit the content of the executive summary to protect both proprietary and more notable non-proprietary, but competitive, information. Many applicants may submit information that is not considered “proprietary,” but if released to competitors may still undermine business practices, product development, and strategic plans.

Should RUS and NTIA choose to expand what information is made available to the public, the agencies should notify applicants as to what specific information will be subject to public disclosure and provide applicants the ability to redact or remove confidential and proprietary information. While allowing for redactions may complicate the application process, increase the burden on applicants and the agencies, and reduce the efficiency of the award

¹⁸ First NOFA, *supra* note 5, at 33107.

¹⁹ Section I.B. of the RFI seeks comment on whether the public should be given greater access to application data submitted to BIP and BTOP. RUS-NTIA Second RFI, *supra* note 1, at 58942.

²⁰ First NOFA, *supra* note 3, at 33126.

process, it is critical that applicants have certainty that they can protect their information and interests. If such an opportunity is not provided, many of the best and most worthy applicants may simply forgo undertaking their proposed broadband projects.

II. Policy Issues Regarding the First Notice of Funding Availability.

A. When Awarding Grants RUS and NTIA Must Prioritize the Objectives, Priorities, and Target Populations Set Forth In the Recovery Act and Relevant Broadband Provisions.²¹

It is vital that both the BIP and BTOP rules continue to prioritize the broad purposes of the Recovery Act as a whole²² and the purposes of the individual broadband provisions creating BIP²³ and BTOP.²⁴ These purposes should guide the broadband grant programs funding priorities. As stated in the Recovery Act Conference Report, Congress intended for the

²¹ Section II.A.1-3 of the second RFI seeks comment on how RUS and NTIA should base their funding decisions. Specifically the RFI seeks comment on how RUS and NTIA should prioritize applicants with regards to specific populations, entities, and project types. RUS-NTIA Second RFI, *supra* note 1, at 58942-58943.

²² “The purposes of this act include the following (1) to preserve and create jobs and promote economic recovery; (2) to assist the most impacted by the recession; (3) to provide investments needed to increase economic efficiency by spurring technological advances in science and health; (4) to invest in transportation, environmental protection and other infrastructure that will provide long-term economic benefits; and (5) to stabilize State and local government budgets in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases.” Recovery Act, *supra* note 2, at 116-117.

²³ The purposes of BIP as defined in the Recovery Act are to facilitate broadband deployment in rural communities. Specifically, the Recovery Act requires that 75 percent of a funded area be in a rural area that lacks sufficient access to high speed broadband service to facilitate economic development. The Recovery Act also mandates that priority be given to projects which: (1) give end users a choice of providers; (2) serve the highest proportion of rural residents that lack access to broadband service; (3) are projects of current or former RUS borrowers; and (4) are fully funded and read to start once Recovery Act funding is revived. *Id.*, at 118-119.

²⁴ The purposes of BTOP as defined in the Recovery Act are to “(1) provide access to broadband service to consumers residing in unserved and underserved areas of the United States; (2) provide improved access to broadband service to consumers residing in underserved areas of the United States; (3) provide broadband education, awareness, training, equipment, access and support to (A) schools, libraries, medical and healthcare providers, community colleges and other institutions of higher education, and other community support organizations and entities to facilitate greater use of broadband service by or through these organizations, (B) organizations and agencies that provide outreach, access, equipment, and support services to facilitate greater use of broadband service by low-income, unemployed, aged, and otherwise vulnerable populations, and (C) job-creating strategic facilities located within a State-designated economic zone, Economic Development District designated by the Department of Commerce, Renewal Community or Empowerment Zone designated by the Department of Housing and Urban Development, or Enterprise Community designated by the Department of Agriculture; (4) improve access to and use of broadband service by public safety agencies; and (5) stimulate the demand for broadband, economic growth and job creation.” *Id.*, at 513-514.

implementing agencies to maintain “discretion in selecting the grant recipients that will best achieve the broad objectives of the [broadband] program.”²⁵ In order to comply with the primary goals of the Recovery Act, RUS and NTIA must keep spurring job creation, economic investment, and technological innovation at the heart of the BIP and BTOP rules. The rules implemented by RUS and NTIA must remain flexible and minimally intrusive to provide the incentive for broadband deployment, adoption, and technological advancement, especially in areas where such an incentive has never previously existed. Now is not the time to diverge from the specific purposes of the Recovery Act and subsequent broadband provisions.

The inclusion of the BIP and BTOP grants in the Recovery Act is a recognition that spurring economic development and job creation go hand in hand with access to broadband. RUS and NTIA should focus grant funds on entities and populations specifically mentioned by Congress in the Recovery Act including public safety, community anchor institutions, and low-income, unemployed, aged, and otherwise vulnerable populations.²⁶ In particular, Native Americans should be a specific population that is targeted by the BIP and BTOP. At the Tribal Nations Conference hosted by the White House on November 5, 2009, President Barack Obama noted that unemployment rates among Native American populations in some areas of the country are as high as 80 percent.²⁷ That statistic should be coupled with a November 2009 study conducted by the New American Foundation concluding that “[a]s digital communications and the Internet become increasingly pervasive, Native Americans continue to lack access to this

²⁵ H.R. Rep. No 111-116, at 774 (2009) (Conf. Rep.) (“*Recovery Act Conference Report*”).

²⁶ Recovery Act, *supra* note 2, at 513-515.

²⁷ Matt Spetalnick, *Obama to Native Americans: ‘You will not be forgotten,’* Reuters, Nov. 5, 2009, available at <http://www.reuters.com/article/domesticNews/idUSTRE5A44CA20091105>.

digital revolution. Native Americans are among the last citizens to gain access to the Internet, with access to broadband often unavailable or overly expensive in Native communities.”²⁸

In a speech given by Federal Communications Commission (“FCC”) Commissioner Michael Copps in July 2009, before the Eighth Indian Telecommunications Initiative Regional Workshop and Roundtable, Commissioner Copps poignantly highlights the vital connection between the economy, jobs, and broadband access.

Broadband is about enabling people, it’s about opening the doors of opportunity and self-fulfillment. It goes to just about every problem confronting our country right now. There are no solutions to poor schools and lagging education, to high unemployment and lost jobs, to shameful standards of health care, to public safety systems so unreliable that two teenagers in a car accident on a cold May evening can’t call for help—their wireless phones have no service—and they freeze to death. There are no solutions to any of these problems that do not have critical broadband components to them. *That’s* what broadband is all about. Enable broadband and we can attack all these problems. Enable broadband and we enable our country and ourselves.

In my eight years at the FCC, I’ve had the opportunity to meet with many tribal leaders and to see, first-hand, the difference that telecom can bring to people’s lives. I’ve come to understand how much harm the lack of telecommunications infrastructure can inflict and it’s a lot. I just do not see any exit to the poverty and lost opportunities that continue to bedevil so much of Indian Country unless we bring these enabling tools of communication to you. That means basic telephone service, of course. But it also means the new possibilities of broadband.²⁹

Commissioner Copps’ statement could have been about any community within the United States currently dealing with the economic downturn, joblessness, and insufficient access to broadband.

The Recovery Act broadband provisions were passed with the acknowledgement that many unserved and underserved communities could economically benefit from access to broadband.

Therefore, to help combat the effects of the current recession and fuel economic growth and job

²⁸ Traci L. Morris, Ph.D. & Sascha D. Meinrath, *New Media, Technology and Internet Use in Indian Country: Quantitative and Qualitative Analysis* at 4 (New American Foundation 2009).

²⁹ Commissioner Michael J. Copps, Address at the Eighth Indian Telecommunications Initiatives Regional Workshop And Roundtable Discussion at 3 (July 28, 2009) (transcript available at <http://www.fcc.gov/commissioners/copps/speeches2009.html>).

creation, RUS and NTIA must prioritize the awarding of BIP and BTOP grants to provide public safety, community anchor institutions, and low-income, unemployed, aged, and otherwise vulnerable populations with the broadband access.

In order to effectively target specific populations and entities RUS and NTIA should not examine projects in a vacuum (*i.e.*, based solely on whether a project provides middle mile or last mile). Evaluating applicants based on individual classes of projects does not take into account the full understanding needed to determine which projects will most effectively advance the goals of the Recovery Act. As a result, RUS and NTIA should give priority to middle mile projects in the evaluation process that also offer last mile solutions. Offering last mile service could consist of a number of situations including, but not limited to, directly providing last mile service over an applicants own middle mile network, or commitments from last mile service providers to use the middle mile network to serve end users in a community.

B. RUS and NTIA Should Retain the Definition of Broadband Established In the Original NOFA.³⁰

RUS and NTIA should maintain its current definition of broadband, which is defined in the original NOFA as the provision of “two-way data transmission with advertised speeds of at least 768 kilobits per second (“kbps”) downstream and 200 kbps upstream to end users, or providing sufficient capacity in a middle mile project to support the provision of broadband.”³¹ As the FCC has recognized, upload and download speeds of 200 kbps to 768 kbps “remain valuable to consumers because of their always-on nature and their capacity for more basic

³⁰ Section II.B of the second RFI seeks comment on whether RUS and NTIA should modify the definition of broadband established under the first NOFA. RUS-NTIA Second RFI, *supra* note 1, at 58943.

³¹ First NOFA, *supra* note 5, at 33108.

Internet services.”³² The value of 200 kbps connection speeds is especially high in unserved and underserved areas where it has proven difficult to provide sustainable high-speed broadband service. The current RUS and NTIA definition of broadband provide the opportunity for all Americans to receive some level of broadband coverage.

C. There is No Need to Modify or Clarify the Interconnection Rules or the Managed Services Exception.³³

There is no need to modify or clarify the term “interconnection,” the extent of awardees interconnection requirements, or the managed services exception as established in the original NOFA. First, the term interconnection is clearly defined.³⁴ The BIP and BTOP rules provide requesting parties the ability to interconnect with awardees’ networks, while providing awardees the recognition that in certain situations interconnection may not be feasible. Second, RUS and NTIA have adopted straightforward interconnection requirements and a fair process for negotiating and resolving interconnection disputes.³⁵ The interconnection requirements and negotiation rules also provide adequate protection to both the interests of awardees and requesting parties. Finally, the managed services exception³⁶ accurately acknowledges that all

³² In the Matter of Development of Nationwide Broadband Data to evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership, WC Docket No. 07-38, *Report and Order and Further Notice of Proposed Rulemaking*, 23 FCC Rcd. 9691, 9701, ¶ 20 n. 65 (2008).

³³ Section II.D of the second RFI seeks comment on whether RUS and NTIA should “clarify the term ‘interconnection’ or the extent of the interconnection obligation” and whether the scope of the managed services exception should be modified. RUS-NTIA Second RFI, *supra* note 1, at 58944.

³⁴ BIP and BTOP awardees are required to “offer interconnection, where technically feasible without exceeding current or reasonably anticipated capacity limitations, on reasonable rates and terms to be negotiated with requesting parties. This includes ob the ability to connect to the public Internet and physical interconnection for the exchange traffic.” First NOFA, *supra* note 5, at 33111.

³⁵ *See Id.* (setting forth the process for negotiating, challenging, and resolving interconnection disputes utilizing the RUS, NTIA and FCC).

³⁶ “[A]wardees may offer managed services, such as telemedicine, public safety communications, and distance learning which use private network connections for enhanced quality of service, rather than traversing the public Internet.” *Id.*

broadband applications are not created equal. This is an important distinction that must be maintained. Every broadband user has unique needs and requirements. Hospitals, first responders, and educational institutions must have the ability to utilize private, dedicated broadband networks, rather than being required to traverse the public Internet, in order to offer the type of service required for telemedicine, public safety communications, and distance learning applications. RUS and NTIA must continue to recognize the enhanced quality of service, reliability, and security requirements of these entities through the managed services exception.

D. RUS and NTIA Have Adopted Sufficient Nondiscrimination Requirements.³⁷

RUS and NTIA correctly concluded in the NOFA that non-discrimination requirements should be based on “the needs of law enforcement and reasonable network management.”³⁸ The four principles set forth by the FCC’s Broadband Policy Statement³⁹ coupled with the FCC’s authority to investigate allegations of inappropriate network discrimination on a case-by-case basis⁴⁰ provides sufficient safeguards for protecting consumers. The RUS and NTIA broadband grant programs must provide the economic incentive for entities to deploy broadband in areas

³⁷ Section II.D of the second RFI seeks comment on whether RUS and NTIA should make any adjustments to the nondiscrimination requirements or modify the scope of the reasonable network management exception. Id.

³⁸ First NOFA, *supra* note 5, at 33111.

³⁹ In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review—Review of Computer III and ONA Safeguards and Requirements; Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities, CC Docket Nos. 02-33, 01-337, 98-10, 95-20, GN Docket No 00-185, CS Docket No. 02-52, *Policy Statement*, 20 FCC Rcd. 14986, 14987-14988, ¶ 4 (2005).

⁴⁰ See In the Matter of Formal Complaint of Free Press and Public Knowledge Against Comcast Corporation for Secretly Degrading Peer-to-Peer Applications; Broadband Industry Practices Petition of Free Press et al. for Declaratory Ruling that Degrading an Internet Application Violates the FCC’s Internet Policy Statement and Does Not Meet an Exception for Reasonable Network Management, File No. EB-08-IH-1518, WC Docket No. 07-52, *Memorandum Opinion and Order*, 23 FCC Rcd. 13028 (2008), *aff’d*, *Comcast Corp. v. Fed. Comm’n Comm’n*, No. 08-1114 (D.C. Cir. Aug. 28, 2009). (finding that Comcast’s network management practices, based on the facts at hand, violated the Commission’s Broadband Policy Statement).

where such an incentive has never previously existed. To promote this end, RUS and NTIA must offer entities significant flexibility to reasonably manage their networks, something that the rules currently provide,⁴¹ but that additional non-discrimination obligations will make difficult. Implementing additional non-discrimination requirements beyond those adopted by the FCC's Broadband Policy Statement will frustrate the goals of broadband grant programs by deterring private participation and investment, and discouraging the economic investment and job growth envisioned by the Recovery Act.

E. Selection Criteria Must Be Technology Neutral In Order to Utilize Recovery Act Funds Efficiently and Comply with Congressional Intent.⁴²

One technology should not be favored over another in both the application and evaluation process. As recognized by Congress, no one type of broadband technology should be given preference over another. The Recovery Act Conference Report states that grants should be awarded based on which projects will “best meet the broadband access needs of the area to be served, whether by a wireless provider, a wireline provider or any other provider offering to construct last-mile, middle-mile or long haul facilities.”⁴³ While each type of service may have its unique benefits, each may also have its unique drawbacks.

A technology neutral approach is also essential to attracting diverse groups of entities that can provide unique and innovative ideas for meeting the challenges of broadband deployment unserved, and underserved areas. A diverse applicant pool will allow RUS and NTIA to examine multiple deployment strategies and pick the one that will be both sustainable and

⁴¹ “All these requirements shall be subject to the needs of law enforcement and reasonable network management. Thus awardees may employ generally accepted technical measures to provide acceptable service levels to all customers, such as caching and application neutral bandwidth allocation, as well as measures to address spam, denial of service attacks, illegal content and other harmful activities.” First NOFA, *supra* note 5, at 33111.

⁴² Section II.A.4 and II.F of the second RFI seeks comment on how RUS and NTIA should determine evaluation criteria and cost effectiveness, respectively. RUS-NTIA Second RFI, *supra* note 1, at 58943-58944.

⁴³ Recovery Act Conference Report, *supra* note 25, at 774.

promote the most appropriate technology for a given area. Evaluating each grant application on its own merits will ensure the most efficient use of Recovery Act funds.

III. Conclusion.

For the foregoing reasons Harris Corporation encourages RUS and NTIA to take into consideration and adopt the recommendations proposed in these comments for the second round of BIP and BTOP grant funding.

Respectfully submitted,

HARRIS CORPORATION

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